S.B.Civil Second Appeal No.266/2007

Lrs of Late Sohan Singh
vs
Jarnail Kaur & Ors.

Date of order : 25.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.VK Agarwal, for the appellant.
Mr.RK Singhal, for the respondents.

<><><>

Heard learned counsel for the parties.

The appellant is aggrieved against the judgment and decree of the trial court i.e., Civil Judge (Jr. Div.) Raisinghnagar dated 24.11.1998 passed in Civil Original Suit No.241/1993 and dismissal of appeal against the said judgment and decree by the court of Addl. District Judge, Raisinghnagar District Sri Ganganagar dated 22nd Oct., 2005.

The plaintiffs-respondents filed the suit for declaration that Will dated 15.1.1992 which was got registered on 30th March, 1992 in favour of the appellant-defendant be declared absolutely illegal and forged and by that Will, the defendant had not acquired any right in the property in dispute. The plaintiffs also sought for relief of injunction.

The trial court decreed the suit of the plaintiffs after holding that the suit property was ancestral and joint and, therefore, Shanker Singh

alone had no right to bequeath the property by Will as well as the trial court also held that the Will was not executed by deceased Shanker Singh by his free will and in a fit state of his physical and mental condition. The trial court also gave detail reasons for finding the Will to be suspicious. The defendant Sohan Singh died during the pendency of the first appeal and appeal was proceeded by the defendant's legal heirs before the first appellate court. The first appellate court also upheld the finding of facts recorded by the trial court in its judgment and decree dated 22nd Oct., 2005.

Learned counsel for the appellant submitted that the trial court was influenced by the allegation of murder of Shanker Singh by the defendant Sohan Singh whereas in the criminal case, the defendant Sohan Singh was acquitted ultimately. It is also submitted that the defendants produced direct evidence to prove the Will and there was no cogent reason given by the courts below for disbelieving the evidence of the attesting witnesses. It is also submitted that the two courts below have committed error of law in observing that the certain other evidence could have been produced but have not been produced by the defendants.

I considered the submissions of learned counsel for the appellant and perused the facts and the

reasons given by the two courts below.

The two courts below gave detail and cogent reasons which makes the Will in question absolutely suspicious and there is no explanation why the deceased deprived his own successors from the property in dispute when there was no reason for doing so. Apart from above, the Will itself contains certain facts, which were taken note of by the trial court in detail on the basis of which, the trial court reached to the conclusion that execution of the Will not beyond doubt. Both the questions of facts have been decided by the two courts below after appreciation of the entire facts and the evidence. Therefore, I do not find any substantial questions of law involved in this appeal.

Hence, the appeal of the appellant is dismissed having no substantial questions of law.

(PRAKASH TATIA), J.

c.p.goyal/-